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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,977	08/26/2003	Akihiro Yanagita	65,017-185	6714
43935	7590	10/21/2008		
FRASER CLEMENS MARTIN & MILLER LLC 28366 KENSINGTON LANE PERRYSBURG, OH 43551				
EXAMINER				
CHEN, BRET P				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
10/21/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/649,977

Applicant(s)

YANAGITA ET AL.

Examiner

Bret Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-44 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 33-37 and 44 is/are allowed.
6) ☒ Claim(s) 26-32, 38-43 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claims 26-44 are pending in this application. Amended claims 26, 33, 37 and canceled claims 19-24 are noted.

The amendment dated 6/30/08 has been entered and carefully considered. The examiner appreciates the amendments to the claims. In view of said amendments, the art rejection over claims 33-37 have been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26-32, 38-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26 lines 3-4, the limitation of “during a continuous dispensing application” is deemed vague and indefinite as to what it is modifying. The examiner assumes it is referring to the dispensing and will treat it as such in this office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 26-27, 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reighard et al. (6,173,864) for the reasons listed in the previous office action.

In amended claim 26, the applicant requires a continuous dispensing application. This is believed to be taught in col.2 lines 2-44. Clearly, the reference teaches of dispensing a material and comparing it with a control amount and adjusting the dispensed amount accordingly (col.2 lines 6-18). The dispensing occurs again (col.2 lines 2 lines 26-44). It is the examiner's position that this meets the limitation of continuous dispensing.

Allowable Subject Matter

Claims 33-37 and 44 are allowed.

Claims 28-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims AND the 112 rejection is overcome.

Response to Arguments

Applicant's arguments filed 6/30/08 have been fully considered but they are not persuasive.

Applicant first argues that the compensation factor is not the difference between a theoretical volume and an actual volume but is calculated by the following equation (p.12 lines 1-14).

The examiner agrees in part. It is first noted that if the equation is the compensation factor, then the examiner agrees that the reference fails to teach same (note the indication of allowable subject matter for claims 35-37). However, since independent claim 26 only requires a compensation factor (not necessarily that of the applicant's equation), then any compensation

factor can be utilized. Referring once again to the applicant's specification as to the definition of a compensation factor, it is merely the difference between a theoretical volume and an actual volume (paragraph 8). As such, no complicated equation needs to be utilized as the compensation factor in claim 26. Since the reference teaches of an measuring an actual volume and comparing with a theoretical volume, it is the examiner's position that one skilled in the art would reasonably expect that a compensation factor is being utilized.

Applicant next argues that the reference does not teach a closed loop control as required by the applicant's method (p.13 first full paragraph).

The examiner disagrees. It is noted that there is no such limitation presently recited in the applicant's claims. Hence, the applicant's arguments are not commensurate in scope with the instant claims.

Applicant's arguments have been considered but are not deemed persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bret Chen whose telephone number is (571)272-1417. The examiner can normally be reached on 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bret Chen/

Primary Examiner, Art Unit 1792

10/13/08